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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
Before The Honorable Thomas S. Hixson, Magistrate Judge

KADREY, et al., ) No. C 23-03417-VC  
Plaintiffs, )  
vs. )  
META PLATFORMS, INC., )  
Defendant. )

San Francisco, California  
Wednesday, September 25, 2024

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND  
RECORDING 3:03 - 3:56 = 53 MINUTES

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1 Wednesday, September 25, 2024

3:03 p.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Okay, everyone. Good afternoon. We  
5 are here in Civil Action 23-3417, Kadrey, et al., versus  
6 Meta Platforms, Inc., Honorable Thomas S. Hixson presiding.  
7 Judge, we're all set. Go ahead.

8 THE COURT: Great. Can counsel for Plaintiffs  
9 please state your names for the record.

10 MR. SAVERI: Good afternoon, your Honor. Joseph  
11 Saveri on behalf of the Plaintiffs. Holden Benon with my  
12 office is also on the line. He's going to be handling most  
13 of the argument for us. Good afternoon.

14 MR. BENON: Good afternoon, your Honor. Holden  
15 Benon for the Plaintiffs.

16 MR. CERA: Good afternoon, your Honor. Aaron Cera  
17 for the Plaintiffs.

18 MS. KELLER: Good afternoon, your Honor. Amy  
19 Keller for the Plaintiff.

20 MR. RATHUR: Good afternoon, your Honor. Mohammed  
21 Rathur for the Plaintiffs.

22 MR. PRITT: Also for the Plaintiffs, Maxwell  
23 Pritt, and my partner, Josh Schiller, of Boies, Schiller and  
24 Flexner, for the Plaintiff.

25 THE COURT: Good afternoon.

1 And for Defendant?

2 MR. GHAJAR: Good afternoon, your Honor. This is  
3 Bobby Ghajar from Cooley.

4 MS. DUNNING: And good afternoon, your Honor.  
5 This is Angela Dunning from Cleary, also on behalf of Meta.

6 MS. HARTNETT: And, your Honor, this is Kathleen  
7 Hartnett from Cooley on behalf of Meta.

8 THE COURT: Hi. Good afternoon, everyone. We're  
9 here for a discovery hearing.

10 Let me first turn to Plaintiffs. Can you please  
11 identify the issues that you would like to address at the  
12 hearing today.

13 MR. BENON: Yes, your Honor. Good afternoon.  
14 This is Holden Benon.

15 At the start, your Honor, I'd just first like to say  
16 thank you, your Honor. We'd like to express our gratitude  
17 for the Court's time and attention to this on such short  
18 notice. I also want to take a brief moment to introduce  
19 Maxwell Pritt and Josh Schiller of the Boies Schiller  
20 Flexner firm. They're here on behalf of the Plaintiffs.

21 Referring to your Honor's question, last Friday,  
22 Plaintiffs submitted a list of eight different issues to  
23 your Honor's courtroom deputy. We are here to discuss those  
24 eight different issues, and if your Honor may, we would like  
25 to address some of those out of order, if that's okay with

1 your Honor.

2 THE COURT: That's fine, but I do want you to  
3 state on the record what the issues are that you're raising  
4 at this hearing today.

5 MR. BENON: Okay. So the first four issues on  
6 that list of eight deal with our request for the production  
7 of responsive documents from the custodial files of five  
8 individuals prior to their depositions taking place.

9 After those four issues, your Honor, there are two, we  
10 call them "cleanup issues," with respect to Meta's  
11 production. One of them has to do with an imaging problem.  
12 Some of these documents that Meta has produced are  
13 improperly imaged, making it difficult for us to conduct a  
14 thorough review.

15 The second cleanup issue, your Honor, has to do with  
16 improperly redacted documents. We also would like to  
17 discuss, briefly, some deficiencies with respect to Meta's  
18 privilege log.

19 Lastly, your Honor, if there is still time, my  
20 colleague, Aaron Cera, will be discussing an issue that has  
21 just recently come up regarding allotted time for the  
22 deposition of 30(b)(6) witnesses versus 30(b)(1) witnesses.

23 THE COURT: All right. Thank you. This is a lot  
24 of issues to raise in a discovery hearing without any  
25 written briefing, and so a possible outcome today is that I

1 order the parties to file a joint discovery letter brief  
2 setting forth the issues in more detail.

3 I'm just previewing that that may be one outcome for  
4 today, but let me hear first, Plaintiffs, if you can briefly  
5 go through the different issues, and briefly present an  
6 argument that will help me to understand whether I can rule  
7 on things at the hearing or whether I need a joint discovery  
8 letter brief. So please go ahead.

9 MR. BENON: Yes, your Honor. With respect to the  
10 first issue we'd like to raise, it's the third issue on the  
11 list, and it has to do with the upcoming deposition of  
12 Eleonora Presani. She's a Meta employee.

13 That deposition, your Honor, is currently scheduled for  
14 tomorrow. We have San Francisco-based attorneys that have  
15 flown out to New York. They're prepared to take that  
16 deposition. Presumably, Meta has West Coast attorneys that  
17 are also prepared to take the deposition in New York  
18 tomorrow.

19 Plaintiffs wish to go forward with that deposition on  
20 the current record, your Honor. However, our request is  
21 that the Court order the production of responsive documents  
22 from this witness' custodial files. Plaintiffs intend to  
23 keep that deposition open for further examination after the  
24 custodial files are produced, assuming the Court grants the  
25 relief we seek.

1 THE COURT: Okay. Thank you.

2 MR. BENON: We also would like -- the second issue  
3 is similar, your Honor, but slightly different. On Friday,  
4 Plaintiffs intend to take the deposition of Alex Boesenberg,  
5 who is an employee of Meta. He has been made available in  
6 Palo Alto, so there won't be as many adverse to travel out  
7 and take this deposition.

8 With respect to this witness, your Honor, we know he  
9 has had conversations with book publishers, for example, to  
10 solicit licenses for book data. This is highly relevant.  
11 It goes to factor four of the Fair Use Doctrine. We have an  
12 RFP pending. It's been served. That goes right to these  
13 documents.

14 Another member of this team, Amanda Kallet, has also  
15 reached out to book publishers for the same purpose, based  
16 on the documents we've seen, but we don't have the  
17 communications themselves with these book publishers.

18 We'd like to take the deposition of Mr. Boesenberg  
19 after these documents have been produced. We think it makes  
20 sense to have that deposition take place the second week of  
21 October, and for Meta to produce these documents as soon as  
22 possible, if possible by the end of this week, by Friday, so  
23 we can have time to review and prepare for his deposition.

24 The third item is with respect to witness Nikolay  
25 Bashlykov, very similar to Mr. Boesenberg. We believe he

1 has highly relevant information. His deposition, your  
2 Honor, is scheduled for October 1st in London. Similarly,  
3 we request an order compelling the production of his  
4 custodial file before his deposition proceeds.

5 We think his deposition should proceed in the second  
6 week of October, when there are currently no depositions of  
7 Meta employees scheduled. It's a wide -- it's an open slate  
8 for Meta employee depositions, and it makes sense to push  
9 these two depositions out until then, so we can receive and  
10 review their custodial files before those depositions take  
11 place.

12 The fourth item is with respect to Mark Zuckerberg. As  
13 your Honor knows, your Honor just denied Meta's motion for  
14 protective order, and that deposition will be going forward.  
15 Plaintiffs request that his custodial files be produced  
16 before his deposition begins. We also would like to bring  
17 to your Honor's attention that the parties mutually  
18 disclosed data sources within the producing parties'  
19 possession, custody, or control.

20 Noticeably absent from Meta's list of data sources are  
21 things like mobile phones, iMessage, WhatsApp, and other  
22 messaging applications. We have raised this with Meta, and  
23 in our experience, your Honor, personnel like Mark  
24 Zuckerberg are often likely to use such messaging platform  
25 like the ones I've just listed, and we'd ask the Court to



1 order Meta to search these data sources as well, prior to  
2 the deposition of Mark Zuckerberg taking place.

3 As a quick aside, your Honor, Meta has asked for our  
4 flexibility in terms of scheduling Mr. Zuckerberg's  
5 deposition, and we are, of course, willing to be flexible  
6 with respect to the scheduling of Mr. Zuckerberg's  
7 deposition.

8 This is a natural break, your Honor. The next items  
9 deal with the cleanup items I've identified before, and  
10 maybe it makes sense for me to take a pause here.

11 THE COURT: I thought there were going to be five  
12 individuals, and you've mentioned four. Did I misunderstand  
13 you?

14 MR. BENON: Well, yes. So, with respect to Mr. --  
15 I kind of mentioned this under Mr. Boesenberg. He has a  
16 teammate named Amanda Kallet who also communicated with book  
17 publishers. So we think it -- we would request the Court  
18 for the production of her custodial files as well prior to  
19 the deposition of Mr. Boesenberg taking place.

20 Since Mr. Boesenberg and Ms. Kallet were on the same  
21 team, they conducted essentially the same function of  
22 reaching out to these book publishers. So we'd ask the  
23 Court to order the production of her custodial file prior to  
24 the deposition of Mr. Boesenberg.

25 THE COURT: Okay. Thank you for the

1 clarification. I appreciate that. I think I understand  
2 Plaintiffs' request for the five individuals. Yes. If you  
3 can now turn to the other issues, please.

4 MR. BENON: Okay. So the first -- I call it a  
5 cleanup item -- is this imaging problem, your Honor. So  
6 Meta produced numerous documents with imaging issues.  
7 Appendices, tables, and lists throughout Meta's production  
8 were not imaged properly. Authors and comments are also  
9 anonymous, making it hard for us to determine who made a  
10 comment to which Word document.

11 Meta says that the text files that were produced  
12 alongside the images are complete, so you can simply toggle  
13 between the text and the image file to see if you're missing  
14 something, but under the ESI stipulation entered in this  
15 case, your Honor:

16 "When an image file is unreadable, the  
17 producing party shall provide a  
18 higher-quality image, or the native, or  
19 the original file."

20 And that's on page 16 of the ESI protocol.

21 Your Honor, Meta's proposed solution is absurd. We  
22 should not have to scrutinize a text file against an image  
23 file for every document in Meta's production to see if we're  
24 missing a few extra lines, and this is not just a  
25 theoretical concern, your Honor.

1 In one instance just this last week, in preparing for a  
2 deposition, one of my colleagues was pouring over a  
3 documents, a key exhibit used in the deposition, and she  
4 happened to compare the text file against the image, and we  
5 were able to make a last-minute request for the image  
6 version of the document, and at the 11th hour, your Honor,  
7 the night before the deposition, the document was re-imaged  
8 and produced, but, your Honor, this is not -- Plaintiffs  
9 take the position this is not how discovery and litigation,  
10 especially litigation of this magnitude, should be  
11 conducted.

12 We shouldn't have to be doing this for each and every  
13 document, and we request an order requiring Meta to  
14 reproduce all the image files -- I'm sorry -- all the  
15 improperly imaged files in its production, and we think this  
16 should take place before the depositions.

17 THE COURT: Okay. Thank you.

18 MR. BENON: The second -- thank you, your Honor.  
19 The second cleanup item, your Honor, has to do with  
20 redactions. So, earlier this month, we raised the issue  
21 that many redactions across Meta's production are improper,  
22 and conceal material that is not attorney-client privileged,  
23 and is not work product on its face. The parties met and  
24 conferred, and Meta agreed to re-review its production and  
25 re-produce documents with fewer redactions.

1 Your Honor, we thought that Meta completed this task as  
2 of last week, but, in reviewing for documents for this  
3 Friday's deposition just last night, we discovered an Excel  
4 sheet with blanket redaction tags on its face, no apparently  
5 basis for attorney-client privilege or work product.

6 We brought this to Meta's attention last night, and we  
7 got a response this morning saying the re-review is still  
8 ongoing and the document would be produced this week. So  
9 we'd ask that Meta be ordered to finish its re-review and  
10 produce these documents no later than Friday.

11 The next issue, your Honor, has to do with deficiencies  
12 in Meta's privilege log, and I'll turn this over to my  
13 colleague, Amy Keller.

14 THE COURT: Great. Thank you.

15 MS. KELLER: Hello. Good afternoon. Apologies,  
16 your Honor. Hello. Good afternoon. Amy Keller for the  
17 Plaintiffs.

18 As it pertains to the privilege log, I want to provide  
19 the Court with more of a status update on our discussions  
20 with data, you know, because this information was just  
21 raised that, of course, whenever redactions are made, enough  
22 information has to be provided to the party to whom the  
23 production is being made to assess any claim of privilege,  
24 and that's consistent with Federal Rule of Civil Procedure  
25 2065.

1           We noted to Meta concerns we had with our privilege log  
2 which prevented us from assessing its privilege claims. Now  
3 we've raised the issue with the Court because of the  
4 then-impending discovery deadline, but we have a small  
5 amount of breathing room now, which allowed us to have a  
6 meet-and-confer with Meta. We raised the issues with Meta  
7 in a, you know, fairly lengthy correspondence with them on  
8 September 18th. We were able to have a productive call with  
9 them yesterday, and Meta will be responding to our letter  
10 with some case law on September 30th. We may need your  
11 Honor's guidance.

12           I don't believe a ruling is needed today, but we wanted  
13 to inform you of the status of our ongoing discussions,  
14 given that we have brought the issue to the Court's  
15 attention because of the discovery deadline, which was set  
16 to expire on Monday, and we might need your Honor's  
17 assistance in the future, depending on how our conversations  
18 go and Meta's response, but, on the whole, we wanted to  
19 provide you with just a status update on that as we work  
20 through these issues, so that we can have, you know, a  
21 little bit more information in the privilege log to see --  
22 to assess their claims of privilege.

23           THE COURT: Thank you for the status update.

24           MR. CERA: Hello, your Honor. Aaron Cera on  
25 behalf of Plaintiffs. If I may, I would like to discuss the

1 30(b)(6) issue.

2 THE COURT: Yes, please.

3 MR. CERA: So, your Honor, this issue is  
4 straightforward. It's whether Plaintiffs are entitled to  
5 separate time limitations for a witness proffered as both a  
6 30(b)(1) and 30(b)(6) witness. We believe the authority  
7 which we have provided to Meta supports an affirmative  
8 answer to this question. I'm happy to provide the case law  
9 to you now here. I do think maybe some factually background  
10 may be helpful, and I'm happy to provide that as well.

11 THE COURT: Okay. Thank you.

12 MR. CERA: So, your Honor, the parties served an  
13 amended 30(b)(1) notice on one of Meta's witnesses on  
14 September 11th, to have his deposition taken on September  
15 18th. On September 16th, the parties served a 30(b)(6)  
16 notice.

17 On September 17th, Meta e-mailed Plaintiffs' counsel  
18 around 5:10 p.m., informing them that the 30(b)(1) witness  
19 set to testify on September 19th would also be prepared to  
20 testify in a -- as a corporate designee, on the discrete  
21 30(b)(6) topic.

22 It is our position that we are -- that Plaintiffs are  
23 entitled to a separate date and time, and that time being  
24 seven hours to depose this witness in his 30(b)(6) capacity,  
25 separate from his 30(b)(1) deposition.

1 As for the case I was referencing, your Honor, that is  
2 Wesley v. Gates, Westlaw 1955, 997, Northern District of  
3 California, 2009. The other authority is Dynatix Design  
4 Solutions, Inc. v. Synopsys, Inc., 2012 Westlaw 5943105, ND  
5 Cal (phonetic) November 27, 2012.

6 THE COURT: Okay. Thank you. Have you covered  
7 the issues that Plaintiffs want to raise?

8 MR. CERA: Yes, your Honor.

9 THE COURT: Thank you.

10 Meta, I would like to hear your responses to the issues  
11 that Plaintiffs have raised.

12 MS. DUNNING: Thank you, your Honor. This is  
13 Angela Dunning from Cleary. I'll go ahead and start, and  
14 Mr. Ghajar may join.

15 I think the recitation of issues that the Court has  
16 just heard illustrates in part why the issues are not ripe  
17 in many respects for resolution. Many of these issues have  
18 not resolved in meet-and-confer yet. They're issues we've  
19 just heard for the first time. So I'll do my best to  
20 respond to the list of issues that the Plaintiffs' counsel  
21 has just gone through, but much of this is new.

22 With respect to their request to add five new document  
23 custodians, that request comes, frankly, your Honor, far too  
24 late. The close of discovery is Monday. At the hearing  
25 before Judge Chhabria on Friday, the Court acknowledged that

1 the parties may take an additional two weeks to complete the  
2 depositions that have already been noticed, but the prospect  
3 of Plaintiffs' proposal, number one, is not possible within  
4 the existing schedule, which Judge Chhabria reaffirmed at  
5 the hearing on Friday.

6       And so we have a situation in which we have scheduled  
7 depositions consistent with that scheduling order. We do  
8 have several depositions scheduled for the first two weeks  
9 of October, but there is not time consistent with the order  
10 that Judge Chhabria reaffirmed to add additional document  
11 custodians at this time. These are not -- these are  
12 individuals that Plaintiffs have been aware of for the  
13 length of the discovery period, and if they --

14       THE COURT: I have a question for you. Can you  
15 describe for me in a little bit more detail the steps Meta  
16 uses to collect and review and produce custodial documents?  
17 That would help me to better evaluate your assertion that  
18 there isn't enough time. For example, does Meta image  
19 someone's e-mail account and then ship that to an outside  
20 vendor? Or if you can just walk me through. I don't need  
21 all the details, but just the general steps that Meta goes  
22 through for each custodian to review and produce their  
23 documents.

24       MS. DUNNING: Your Honor, I am -- I'll do my best  
25 to describe that at a high level, and then, if you need more



1 detail, some of my colleagues may join in. Yes.

2 To collect documents, we ascertain where the custodian  
3 is likely to keep documents that could be responsive. There  
4 is a process for identifying those, for pulling them through  
5 a central process, for getting them to a vendor. They need  
6 to be processed. They need to be reviewed for  
7 responsiveness, relevance, and privilege. They then need to  
8 be processed for production, and Bates-labeled, and  
9 produced.

10 I understand from the team that the -- and from the  
11 client -- that the minimum amount of time, if Meta were to  
12 prioritize the document production in this case above all  
13 other matters, and to put all available resources to it,  
14 would be a minimum of two weeks to produce documents for  
15 even one custodian.

16 So I think there is no offense at the client that this  
17 is a request that could possibly be complied with within the  
18 schedule, and, your Honor, frankly, we're five days before  
19 the close of discovery. These issues have been raised at  
20 the very last minute, and it's just not consistent with the  
21 manner in which the parties should have been conducting  
22 discovery to this point.

23 THE COURT: And then, to follow up on my previous  
24 question, once Meta identifies locations or data sources for  
25 each custodian, and then pulls those, and then sends them to

1 a vendor, how do you narrow that down? Is Meta using, for  
2 example, search terms or technology-assisted review? What's  
3 the next step?

4 MS. DUNNING: Your Honor, there are search terms.  
5 The ESI order in this case provides for search terms, and  
6 there is, you know, some negotiation over that, and it's a  
7 complicated process, your Honor.

8 THE COURT: Okay. Thank you. That detail is  
9 helpful. Please proceed.

10 MS. HARTNETT: Sorry. If I may, this is Kathleen  
11 Hartnett, co-counsel for Meta.

12 I just wanted to chime in that our understanding is  
13 that, in addition to the review process, there has to then  
14 be the privilege review, so that's an extra step that has to  
15 occur before the documents can then go back to the vendor to  
16 be processed for production, and my understanding is, as of  
17 our July substantial completion period, we had spent over  
18 3,300 hours on first-level review of documents, and over  
19 1,000 hours in other reviewers on documents, not including  
20 various specialized reviews. So this is a very  
21 time-consuming process, because the reviewers have to do a  
22 careful and good job.

23 THE COURT: Okay. Thank you.

24 MS. DUNNING: Your Honor, with respect to the  
25 other aspect of this request, as counsel indicated, I am

1 here in New York, prepared to defend Doctor Presani's  
2 deposition tomorrow. Meta would also strongly object to any  
3 suggestion that the deposition proceed, and then be kept  
4 open for, you know, additional questioning down the line.

5       You know, we took your Honor's order very seriously  
6 when we were here a couple of hearings ago that the, you  
7 know, depositions needed to proceed and be completed within  
8 the schedule ordered by Judge Chhabria. Judge Chhabria then  
9 reaffirmed that schedule. We have taken several depositions  
10 at this point, even as we continue to receive documents from  
11 the Plaintiffs much after their substantial completion date.

12       For many of the Plaintiffs, they have produced more  
13 documents after the substantial completion date than they  
14 did before. We have not received a privilege log for at  
15 least one of the Plaintiffs, and yet I think all of the  
16 parties are trying to proceed with depositions, and both  
17 sides have done that with the understanding that there would  
18 be a single day of deposition of no more than seven hours,  
19 consistent with the federal rules.

20       So I think the last-minute request to both add  
21 additional document custodians, a request that could have  
22 been made months ago, and enabled this in an orderly  
23 fashion, is untimely, as is the suggestion that depositions should  
24 be continued or reopened if further documents later emerge.

25       THE COURT: Okay. Thank you. Do you want to turn

1 to the issues that the other side described as "cleanup  
2 problems"?

3 MS. DUNNING: Sure. There was one other issue on  
4 the new custodians, your Honor, and it's one that we hadn't  
5 heard yet, and we certainly haven't fully met and conferred  
6 on, and that was with respect to their order that any  
7 production of documents include a variety of additional data  
8 sources.

9 I did want to clarify for the record that Meta's  
10 collection of documents has been complete. We have  
11 collected documents from any location where responsive or  
12 relevant documents could be located. If they're for the  
13 custodians that are part of the case, if they do not have  
14 documents from certain locations, it's because those  
15 locations are not relevant for purposes of the case, and so  
16 we're not sure what that issue is that they're raising, but  
17 it's certainly not ripe for the Court's intervention.

18 Turning to the alleged imaging issues, there are -- the  
19 allegation -- and we clarified this in the e-mail that I  
20 sent Ms. Mahr (phonetic) on Monday, but the -- to date, as I  
21 understand it, Plaintiffs have identified 11 documents, out  
22 of a production of roughly 20,000 documents from Meta, that  
23 contain this imaging issue in which some of the content did  
24 not appear in the produced versions of the documents, though  
25 it does appear in the text file.

1           When those instances have been brought to Meta's  
2 attention, Meta has promptly re-collected those documents  
3 and re-produced them, and we have made clear that if  
4 Plaintiffs identify any other documents that they believe  
5 have cut-off or missing content, that we would be happy to  
6 try to address that as quickly as possible.

7           Counsel referenced an instance in which a document was  
8 recently provided to them before the deposition. I wanted  
9 to clarify, your Honor, that that document was actually  
10 being re-produced at that point for a third time. When they  
11 had originally brought this document to our attention, we  
12 had re-produced it as a PDF that contained all of the  
13 content, and I think the Plaintiffs' counsel may have missed  
14 that.

15           So we're not aware of other documents with imaging  
16 issues. We are certainly happy to address any other imaging  
17 issues that Plaintiffs want to raise with us, but the  
18 request in their e-mail to you that Meta re-review its  
19 entire 20,000-document production to try to find instances  
20 in which content may be cut off is not proportional or  
21 appropriate. We think the much better approach, your Honor,  
22 is, to the extent that there are specific documents that  
23 they plan to use or need, and believe that this issue is  
24 present, we can certainly address that promptly as it comes  
25 up.

1 And let me pause there before I turn to the redactions  
2 issue, your Honor.

3 THE COURT: Thank you. I think I understand your  
4 argument, so why don't you go ahead to the redactions.

5 MS. DUNNING: Thank you so much. So I am  
6 surprised to hear the representation from counsel that we  
7 said we would be finished last week in re-producing  
8 documents that are redacted. That is not accurate. We have  
9 been very clear with Plaintiffs' counsel that the redaction  
10 issue they identify, you know, has arisen because, in some  
11 instances, more than one version of a document was part of  
12 the production, and redactions were applied to copies of  
13 that same document, in some instances, differently.

14 We committed to re-reviewing every redacted document,  
15 and to making a new production of corrected redactions by  
16 the end of this week, and we are on track to do that. So,  
17 although this is not an issue that has, you know, been  
18 through the appropriate meet-and-confer process, as required  
19 by the discovery order, it's also a moot one, because we  
20 have been doing exactly what they've asked, which is to go  
21 through every redaction and try to address any  
22 inconsistencies, and then get those re-produced to them this  
23 week.

24 So we're doing just that, and, your Honor, I'll also  
25 just point on this point that, in many instances, you know,

1 they have -- because they have multiple versions of the same  
2 document, they do have the lesser-redacted version. They  
3 just want us to correct the other versions to also be lesser  
4 redacted, and we've committed to doing that, and we'll have  
5 that done by the end of the week.

6 THE COURT: All right. Thank you.

7 MS. DUNNING: And I'll turn it to my colleagues to  
8 address the remaining issue with respect to 30(b)(6).

9 MR. GHAJAR: Your Honor, this is Bobby Ghajar on  
10 behalf of Meta. The 30(b)(6) versus 30(b)(1) issue was an  
11 issue that we actually flagged for the Court, but I  
12 appreciate my colleague, Aaron Cera from Plaintiffs, raising  
13 it. I think we can all agree that if somebody has a  
14 30(b)(6) deposition that is for 30 topics, it doesn't  
15 entitle them to seven hours per topic. I think, as with all  
16 things litigation-related, there is a reasonable compromise  
17 to be had.

18 We have not taken the position, your Honor, that, if  
19 there's a 30(b)(1) witness who happens to be identified as  
20 the designee for a couple of 30(b)(6) topics, that they  
21 don't get a little bit of additional time. However, the  
22 idea that if somebody is a 30(b)(6) witness, and designated  
23 on a discrete, single topic, that the Plaintiffs get another  
24 seven hours for that topic, particularly in the instance  
25 that Mr. Cera cited where the deposition was completed, we

1 do not believe that's reasonable.

2       Although we do not have the cases they cited handy, and  
3 there is counter-authority and distinguishing authority that  
4 we would bring to the Court's attention if this were  
5 briefed, we believe the more prudent approach would be to  
6 reach an agreement with the other side that, where a witness  
7 is handling a couple of discrete 30(b)(6) topics, there be  
8 some reasonable additional time, but certainly not a second  
9 day, and certainly not seven hours for that deposition.

10       In this case, we have a relatively discrete group of  
11 deponents whose depositions have been noticed. It is my  
12 understanding as of this date that the group of individuals  
13 who have been noticed as 30(b)(6) witnesses will likely  
14 cover one or more 30(b)(6) topics. One example was provided  
15 to the Court by Mr. Cera. There will be witnesses in the  
16 coming week that will handle other topics.

17       And so we would benefit from the Court's guidance as to  
18 whether Plaintiffs are entitled to seven hours for each  
19 individual witness who might cover a topic or two, but again  
20 I would suggest to the Court that the parties should meet  
21 and confer and try to reach a compromise, for example, an  
22 extra 30 minutes per topic, an extra hour per topic,  
23 something proportional, before your Honor issues a blanket  
24 ruling that, for any witness being deposed in their  
25 individual capacity, and regardless of the number of



1 30(b)(6) topics on which they may speak, that the Plaintiff  
2 get an extra seven hours per witness. We don't think that's  
3 reasonable or proportionate.

4 THE COURT: Okay. Thank you.

5 This is a number of discovery issues, and I understand  
6 that they're important issues, and I appreciate the  
7 arguments that both sides have presented at this hearing  
8 today that have previewed these disputes for me. Given the  
9 number of issues, I am going to want the parties to file a  
10 joint discovery letter brief to fully set forth your  
11 arguments. I think that will help me to make a thoughtful  
12 decision on these issues.

13 So now I want to turn to talk about when the joint  
14 discovery letter brief should be filed, and my default rule  
15 is the letter brief is five pages, but we can change that if  
16 the parties would like to have more space.

17 Let me turn first to Plaintiffs. When do you propose  
18 that I should set the deadline to get the joint discovery  
19 letter brief filed, and what do you propose in terms of page  
20 length?

21 MR. BENON: Your Honor, two things with respect to  
22 the timing. As I previewed for the Court, there's currently  
23 a deposition set for Friday. That's a deposition that's  
24 going to hinge on a lot of these documents that are at  
25 issue.

1 We would ask the Court, and also ask my colleagues on  
2 the other side of the V (sic), if they'd be flexible on  
3 pushing that deposition out to the second week of October,  
4 so the parties can hash these issues out in the meantime,  
5 and we'd also ask for a Monday filing on the joint letter  
6 brief, with 10 pages, total, five pages for each side, to  
7 hash these issues out.

8 THE COURT: Thank you.

9 Let me turn to Meta. Your thoughts on timing and page  
10 limits?

11 MR. GHAJAR: Thank you, your Honor. This is Bobby  
12 Ghajar again. I'll address this issue.

13 First, on the timing and page limits, Monday seems  
14 reasonable, and the proposed page limits seem reasonable as  
15 well. We have to agree between counsel in terms of timing  
16 of exchange and so on, and I'm sure we can do that.

17 THE COURT: Okay. Thank you.

18 Then I order the parties to file a joint discovery  
19 letter brief discussing the issues that were raised at this  
20 hearing today by Monday, September 30th, and the joint  
21 discovery letter brief should be no more than 10 pages, with  
22 five pages per side.

23 We've gone through the discovery issues that Plaintiffs  
24 wanted to raise on this call. Let me turn now to Meta. Do  
25 you have any discovery issues that you would like to raise?

1 MR. GHAJAR: Yes, your Honor. This is Bobby  
2 Ghajar again. I appreciate the opportunity.

3 The issue is not fully ripe, but I will preview it for  
4 your Honor, and I would ask the Court to set a deadline for  
5 the parties to brief the issue. It doesn't have to be on  
6 Monday, but it can be at some point next week.

7 We have raised issues with Plaintiffs regarding missing  
8 privilege logs, a privilege log that has yet to be produced.  
9 We received a privilege log weeks after the mutually agreed  
10 upon date for them to produce it, and when we finally  
11 received the privilege logs for a number of the Plaintiffs,  
12 we saw the same descriptions of documents copied and pasted  
13 many times, over and over again, throughout.

14 In short, there's an issue with their privilege log on  
15 its face. We are going to meet and confer with them as soon  
16 as they'll make themselves available. We'd ask the Court to  
17 encourage Plaintiffs to do that quickly, and then set a date  
18 next week for the parties to brief any remaining issues as  
19 to the privilege log that Plaintiffs have produced,  
20 including the untimeliness of one of the privilege logs.

21 THE COURT: Thank you.

22 Let me hear Plaintiffs' response on this issue.

23 MR. BENON: Your Honor, on behalf of the Kadrey,  
24 Silverman, and Golden Plaintiffs, we just received a letter  
25 from Meta's counsel. I believe it was today. We note there

1 was a paragraph in there that pertains to those three  
2 Plaintiffs. We're reviewing it. People are already working  
3 on addressing these issues.

4 With respect to those three Plaintiffs, it's very  
5 likely that the issues will be mooted, because the  
6 Plaintiffs will simply just address the concerns through a  
7 reproduction of the privilege log.

8 THE COURT: Thank you.

9 Meta, you wanted a deadline for the parties to get a  
10 joint discovery letter brief on file if they're not able to  
11 resolve this through meet-and-confer. What do you propose  
12 as the deadline?

13 MR. GHAJAR: I think next Wednesday or Thursday,  
14 your Honor, would be reasonable, and we do hope to narrow or  
15 moot the issues, as we have attempted to do with Plaintiffs  
16 when they've raised any concern or question regarding Meta's  
17 documents or logs or other issues in the case. So I'm  
18 hoping that, by Wednesday or Thursday at the latest, we will  
19 have gone through that process and exhausted it. So  
20 Wednesday or Thursday at the latest, your Honor.

21 THE COURT: And do you think that the default  
22 limit of five pages would be sufficient for this issue?

23 MR. GHAJAR: In this instance, on this one issue,  
24 yes, your Honor.

25 THE COURT: All right. Let me turn to Plaintiffs.

1 Your thoughts on timing and page limits?

2 MR. BENON: For the Kadrey, Golden, and Silverman  
3 Plaintiffs, that makes sense, but I'd like to hear from my  
4 colleagues at the Clobes and DiCello firms regarding the  
5 other -- their Plaintiffs.

6 MS. KELLER: Yes, your Honor. Amy Keller on  
7 behalf of Plaintiff TerKeurst. I believe that makes sense  
8 as well. We are in agreement with the other Plaintiff.

9 MR. RATHUR: And yes, your Honor, on behalf of the  
10 remaining Plaintiffs. This is Mohammed Rathur. We are in  
11 agreement on the timing and limits.

12 THE COURT: Okay. Thank you.

13 Then, with respect to this issue, I order the parties  
14 to meet and confer to see if you're able to resolve the  
15 dispute. If you are not able to resolve the dispute, then I  
16 order the parties to file a joint discovery letter brief no  
17 later than Thursday, October 3rd, not to exceed five pages.

18 Let me turn to Plaintiffs before we end this hearing  
19 today. Are there any other points that you wanted to  
20 address?

21 MS. KELLER: Your Honor, Amy Keller again on  
22 behalf of Plaintiff Lysa TerKeurst, related to the earlier  
23 topic I discussed today concerning Meta's privilege logs.  
24 Perhaps it would make sense, given that the parties are  
25 still meeting and conferring, and we'll get Meta's response

1 on Monday related to the issues we brought up to them during  
2 our meet-and-confer yesterday, that if the parties are  
3 unable to come to a resolution through that process, that we  
4 also address it through the briefing that was just set to be  
5 filed October 3rd.

6 THE COURT: I see.

7 And, Meta, what are your thoughts? Do you think, if  
8 that issue is not able to be addressed through  
9 meet-and-confer, you could include that issue in the joint  
10 discovery letter brief that's due on October 3rd?

11 MR. GHAJAR: I think that makes sense, your Honor.  
12 This is Bobby Ghajar again. I think that makes sense. It's  
13 a proven approach. If we're going to do, potentially, two  
14 sets of privilege issues in the same briefing, I might  
15 suggest an enlargement of the page length, if your Honor  
16 would indulge, perhaps a couple more pages per side, at the  
17 most. We'll try to be judicious with what we write, but I'm  
18 agreeable to that approach.

19 THE COURT: And can you propose a specific number  
20 of pages?

21 MR. GHAJAR: Sure, your Honor. I guess I would  
22 suggest three and a half pages a side.

23 THE COURT: Okay. So seven pages, total.

24 And let me turn to Plaintiffs. Does that page length  
25 make sense to you?

1 MS. KELLER: On behalf of Plaintiff Lysa  
2 TerKeurst, it does. I want to defer to my other colleagues  
3 to see if they have additional thoughts on this as well.

4 MR. BENON: That seems fine for the remaining  
5 Plaintiffs.

6 THE COURT: Okay. Then, with respect to both  
7 privilege issues, the one raised by Plaintiff and the one  
8 raised by Meta, I order the parties to meet and confer, and  
9 if they're not able to resolve their disputes, then I order  
10 them to file a joint discovery letter brief no later than  
11 October 3rd and no longer than seven pages.

12 Are there any other points --

13 MS. KELLER: Thank you, your Honor.

14 THE COURT: -- Plaintiffs wanted to raise at this  
15 hearing today?

16 MR. BENON: Yes, your Honor, and this is Holden  
17 Benon again. This is something I just briefly touched on.  
18 Two of the depositions that are currently scheduled --  
19 that's Mr. Boesenberg on Friday and Mr. Bashlykov on  
20 Tuesday, those are sort of -- those issues touch on the  
21 custodial issues that we talked about, your Honor, and I  
22 respectfully would ask the Court to encourage Meta to be  
23 flexible on rescheduling those depositions for the second  
24 week of October, within a deadline set by the Court, so that  
25 the parties can work out those issues and still have enough

1 time for, hopefully, a production of documents before those  
2 depositions take place.

3 MS. DUNNING: Your Honor, this is --

4 THE COURT: Go ahead.

5 MS. DUNNING: I'm sorry. This is Angela Dunning,  
6 your Honor, on behalf of Meta. I understand that Mr.  
7 Bashlykov is not available after next week, and we provided  
8 the date that would work for him within the discovery  
9 schedule ordered by Judge Chhabria. So we're not able to  
10 accommodate a request to push him any later. I'll let Mr.  
11 Ghajar address Mr. Boesenberg, but I understand that Doctor  
12 Presani's deposition, everyone agrees, will be proceeding  
13 tomorrow.

14 MR. GHAJAR: Thank you. This is Bobby Ghajar  
15 again. I would agree with my colleague, Ms. Dunning. The  
16 Friday deposition that's been scheduled with the witness  
17 here is calendared. That deposition should proceed. It  
18 should not be held in limbo pending an as-yet-resolved  
19 request for custodial documents, which the Court may or may  
20 not provide, and which may or may not be available before  
21 the close of deposition discovery, and I will repeat my  
22 colleague's argument on that point regarding the  
23 untimeliness.

24 As an aside, your Honor, your Honor helped resolve  
25 discovery issues that Meta raised a few weeks ago, and



1 granted a motion with respect to a number of document  
2 requests. I'm bringing this up because your Honor gave the  
3 Plaintiff until September 30th to produce documents, and, at  
4 the time, that was the deadline for all discovery and  
5 depositions.

6 We took depositions, for better or worse, without  
7 having access to documents that are going to be produced in  
8 five days. We took depositions without documents that we  
9 believe were called for many months ago. So the fact that  
10 Plaintiffs are just now raising ESI requests under the ESI  
11 protocol is not a basis, we believe, for the Court to  
12 adjourn a deposition that has long been scheduled,  
13 inconvenience witnesses, and disrupt a lot of preparation  
14 that went into arranging for these depositions.

15 And I'll note, although I don't have the privilege of  
16 having to go to Europe next week, we made extensive  
17 arrangements, your Honor, to make two European witnesses  
18 available, both in London. That's not where the witnesses  
19 reside, but we did that to save Plaintiffs a lot of hassle  
20 and a lot of effort to try to depose them where they reside.  
21 It took a lot of coordination. As you can imagine, it took  
22 a lot of expense, airfare, et cetera, and so attempting to  
23 move those depositions for reserving an extra day we do not  
24 believe is appropriate.

25 THE COURT: All right. Thank you, Counsel.

1 I'm not going to say anything about the scheduling of  
2 depositions for particular witnesses on particular days. I  
3 am not familiar with the witnesses' availability, and I'm  
4 not aware of all the meeting and conferring that has gone on  
5 between the two sides. So I don't feel that I'm adequately  
6 knowledgeable to say what depositions should happen on what  
7 day, so I'm just not going to say anything about that at  
8 today's hearing.

9 Let me turn to Meta. Are there any further items that  
10 you wanted to raise at this hearing today?

11 MR. GHAJAR: This is Bobby Ghajar. Nothing from  
12 my perspective. I'll ask my colleagues, Ms. Hartnett and  
13 Ms. Dunning, if there are any other issues they'd like to  
14 address.

15 MS. DUNNING: Not at this time, your Honor. We  
16 appreciate your input, as always.

17 MS. HARTNETT: Nor here, thank you. This is Ms.  
18 Hartnett.

19 THE COURT: All right. Well, thank you, Counsel.  
20 I wish you good luck in meeting and conferring on the  
21 privilege issues, and, if not, then I'll look forward to  
22 seeing the parties' joint discovery letter brief on October  
23 3rd, and with respect to the remaining issues, I'll look  
24 forward to receiving the parties joint discovery letter  
25 brief on Monday, September 30th.

1 Have a good afternoon, counsel.

2 ALL: Thank you, your Honor.

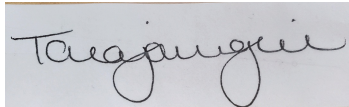
3 THE CLERK: Thank you, everyone. We're off the  
4 record in this matter.

5 (Proceedings adjourned at 3:56 p.m.)  
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1 CERTIFICATE OF TRANSCRIBER

2  
3 I certify that the foregoing is a true and correct  
4 transcript, to the best of my ability, of the above pages of  
5 the official electronic sound recording provided to me by  
6 the U.S. District Court, Northern District of California, of  
7 the proceedings taken on the date and time previously stated  
8 in the above matter.

9 I further certify that I am neither counsel for,  
10 related to, nor employed by any of the parties to the action  
11 in which this hearing was taken; and, further, that I am not  
12 financially nor otherwise interested in the outcome of the  
13 action.

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16  
17 Echo Reporting, Inc., Transcriber

18 Friday, September 27, 2024  
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